

B. T. 11. 117

THE
CASE
OF THE
City of OXFORD.

SHEWING

How far they are concerned to Oppose the
Confirmation of the Charters and pre-
tended Priviledges of the UNIVERSITY.

WITH AN

Answer to a late Pamphlet Printed at Oxford, Entitled, *A
Defence of the Rights and Priviledges of the University of
Oxford.*

The PREFACE.

IT is now Three Years and more since the University of Oxford first troubled the World and both Houses of Parliament with the Charter 11 Car. 1. we are sorry they should think this the most favourable Conjunction which hath happened these Threescore Years to establish Arbitrary Power in Oxford, when the Nation is in full possession of Liberty, and hath lately rescued it self by Arms from Slavery and Oppression. Those Gentlemen could not bear the Yoke themselves, but would lay a more intolerable one upon us, and make the City of Oxford the only place that hath no Inheritance in the Laws of England.

The Reverend, and never to be forgotten Bishop Fell, who was a true Patron and Guardian of the University, whose Heart and Soul were in their Interest, never attempted a Confirmation of this Charter, but was contented with those wise and moderate Men that went before him, to reserve it in Chains of Darknes; and it had undoubtedly been consigned to everlasting Rest, had not the spirits of some few Men disturbed its quiet, and forced it into Publick.

It had unquestionably been more Wise and Honourable for that Great and Venerable Body to have buried this Charter in the same Grave with that Reverend Prelate that procured it, than to set it up at this day, to convince the World, that nothing will satisfy them but the exercise of an Arbitrary Power over their Neighbours established by Law; for let them pretend what they will, they cannot produce one Article in that whole Charter (besides that of Priming) which may be serviceable to the Honour of God, the Advancement of Religion, the Encouragement of Learning, or the Good of Mankind.

To make their Charter go down the better, they have lately published at Oxford [a Book, Entituled, A Defence of the Rights and Priviledges of the Univerſity of Oxford] with the Imprimatur of Jonathan Edwards, Vice-Can. Oxon. We are concerned that we muſt complain, that we did not meet with that Sincerity in that Book which became that Worſhy Body whoſe Name it bore; wherein the Author pretends to Charters which he never ſaw, nor the Univerſity ever had; he hath abuſed Records, and conſulted more what would ſerve his turn, than what was true.

We would not here be thought to charge that whole Body with ſo much diſingenuity; we do admire and honour them for their Learning, and Integrity, and do paſſionately deſire to maintain a good Correſpondence with them. But we muſt be excuſed, if we ſay, That the Liſenſer hath published thoſe things in the Name of the Univerſity, which the Univerſity will not, nay, cannot with Honour own.

The great Deſign of that Book is to evince, That nothing is granted in that Charter, which was not their unqueſtionable Right before; how well they have performed it, is the deſign of the following Papers to ſhew, wherein we Challenge our Adverſaries to produce one Inſtance in which we have prevaricated, or one Record or Charter which we have miſtaken or misrepresented.

But admitting their Poſition true, that nothing is granted by this Charter which was not their unqueſtionable Right before, why are they then ſo zealous for a Confirmation of it? All their other Charters are confirmed by the Act of 13 Eliz. And if all the Grants of this Charter are comprized in their former Charters, then are all the Grants of this Charter confirmed already. If they think the Act 13 Eliz. not of force enough, or are deſirous to renew it, a Confirmation of all their Charters (except this 11 Car. 1.) which we ſubmit to, will implicitly confirm the particulars granted by this, if they were included in their former Charters.

In the following Papers we do not condeſcend to that part of the Book, which ſhews the Wit of the Author, more than his Judgment, or Diſcretion; particularly when he tells us they are our Benefactors, and that we ſpend their Money; but we ſhall take the Liberty only to advertiſe the Author and the Liſenſer with this Observation, That it is as hard for Mankind to remember their beginning, as their latter end.

The Univerſity tell us in their Defence, that they deſire this Confirmation of their Charters only to ſecure themſelves from a return of thoſe Encroachments in any ſucceeding Reign, which they experienced in the laſt: If they are ſincere, and deſign no more, then let them Examine this Charter, and if they can find any thing which may ſtrengthen them againſt the Crown, or give them any new Priviledges not relating to us, we ſhall ſubmit to them, and be glad to ſee them Enacted in her Verba; but they are miſtaken, the good Arch-biſhop took care only to make them Lords at home, but left them as much in the hands of the King as they were before.

We ſhall not endeavour to weaken the Reputation of their former Grants, by ſhewing that they were obtained in the dark Times of Popery and Superſtition; and by the mighty Intereſt of thoſe, who had the Seals, as well as Conſciences of Princes in their power; although ſome of them did not paſs without Reflection in the Ages in which they were granted, as appears by the Statute 9 H. 4. Cap. 1. whereby in a General Confirmation of the Charters of all the Cities and Burroughs of England, certain Franchiſes granted to the Univerſity of Oxford are excepted. And the Charter 14 H. 8. procured by Cardinal Woolley, was ſhortly after the making it branded as unreaſonable, and a Bill paſſed the Houſe of Commons in two ſeveral Parliaments, for the Repeal of it, but theſe Parliaments were diſcontinued before the Bill was perfected.

The Univerſity themſelves were ſo ſenſible that that Charter was an Invaſion upon us, that in an Answer in Chancery 22 H. 8. to a Bill preferred by the City, they declared they had not, nor ever intended to put it in execution.

But theſe Charters have been long ſince confirmed, and we ſubmit to them; it being our deſire only to preſerve what is left, and to tranſmit that Liberty, and thoſe Priviledges to our Poſterity, which we have received from our Anceſtors; altho' we cannot but obſerve upon the Statute of Queen Elizabeth as an extraordinary thing, that Threeſcore Charters obtained in the dark, and upon Princes who never conſidered, nor perhaps knew the Contents of them, ſhould be confirmed in groſs. But we ſubmit our City, and our ſelves to the Wiſdom and Juſtice of this Parliament, who we are aſſured will be tender of us; and wiſh, and well conſider this Charter, which will be the beſt Confutation of it.

The C A S E, &c.

1. **B**Y a Charter, bearing date the 30th. day of *March*, 11 *Car. 1.* the Licensing of Taverns is granted to the University; and all Magistrates and others, within or without the University, (except the Chancellor and his Vice-Chancellor) are prohibited to intermeddle with the licensing of Vintners in *Oxford*; and none are to License any Ale-houses there by the expresse consent of the Chancellor, or Vice-Chancellor; Any Act or Statute to the contrary notwithstanding. And by colour of this Grant they do License Ale-house-keepers, and take Recognizances, but did never return any of them to the Quarter Sessions until about Ten Years last past, and have since returned some but seldom. Whereas by the Statute made 7 *Edw. 6.* the Power of granting Wine-Licenses in *Oxford*, is vested in the City: And also by the Ancient Charter of the City, none that is not of the Guild of the City ought to sell any Wine Retail in the same. And the Magistrates of the City, by several Acts of Parliament have Power, as their Majesties Justices of the Peace, to License Inns and Ale-houses within the City.

The University in their Defence pretend that the sole Licensing of Taverns was Originally vested in them under *Edward III.* But they can shew no Grant of any such Power, nor one License granted in pursuance of it before 7 *Edw. 6.* They have indeed by Grant 29 *Ed. 3.* the Assize and Assay of Wine and Ale, but they never set up for the Licensing of Taverns before the 7 *Ed. 6.* And if they had no Right before that Statute, we are sure they can have none since; the saving in that Statute of the Priviledges of the University may preserve an old Right, but cannot give them any new: Besides that Statute doth by expresse words vest the Right of Licensing three Taverns in the City. But admitting the Title to be in the City under 7 *Ed. 6.* yet they say, that the 12 *Car. 2.* saves the Right of the University, and takes away all pretences of any Right from the City. But we cannot see how they will make that out: For if the saving in that Statute is sufficient to preserve the Right of the University (if they had any) it will be surely as strong to save the Rights of the City; the Right of the University, and of all Cities and Towns Corporate being saved by the very same words.) Their Power over Ale-houses they claim as a Branch of the Clerkship of the Market, which, they say, hath been allowed to be such in all Compositions with the Town; But they cannot produce one Composition for that purpose. And if this Power is included in the Clerkship of the Market, then the Clerks of all the Markets in *England* have as good a Title to it as themselves. Before the 5 and 6 *Edw. 6.* any Man might sell Ale without License, and since that Statute no other Conditions are required than are prescribed in that Act. If the Vice-Chancellor, because he is Clerk of the Market, retains a Negative Voice, and none can sell Ale without his License and Consent, the same Power may be as justly challenged by the Clerk of any other Market whatsoever.

2. By that Charter it is granted, that the Chancellor, Vice-Chancellor, or Proctors, shall have Power to search, by Day or by Night, for Suspicious Persons, and for such as can give no Account of themselves; and to punish such as are faulty by Imprisonment, Banishment, or otherwise, at the Will of the Chancellor, or Vice-Chancellor, any Statute to the contrary notwithstanding. And in the said Charter there is a Mandate to the Mayor and Officers of the Town, to be assistant after the search of such Offenders, and by colour of this Charter, and a pretended Custom, they claim a Power to impose Forty shillings upon any Person (whether Citizen or Stranger) being out of his House or Lodging after Nine of the Clock; which they have exercised not only upon private Citizens, but upon the Magistrates of the City, in the execution of their Offices, and have imprisoned the Constables for keeping Watch and Ward according to the Statute of *Winchester*: Which is a great Invasion upon the Liberty of the Subject, and hath been often declared in *Westminster-Hall*; wherefore it is humbly hoped this Parliament will not affirm the same by a Law.

The University, in their Defence, entitle themselves to the Night-watch by Custom confirmed by the Charters of *H. 3.* and *Ed. 3.* and ratified by Parliament in Queen *Elizabeth's* time. It is most plain, that by the Statute of *Westminster* the 1st *Cap. 9.* the Statute of *Winton*, and 2 *Ed. III. Cap. 6.* the City of *Oxford* hath

and a Title, and is as much obliged to keep Watch and Ward, as any other City or Corporation in England. Agreeable to these Laws were the Charters of those Cities. The Charters of the University do grant the Night-watch to the City, and oblige the Citizens to keep the Watch, for the Security of themselves and of the University. The Charter of the 39 H. III. which the University in their Defence, and Archbishop Laud in his Charter, cite for the Confirmation of the University's Interest in the Night-watch, is full for this purpose. The Charter follows verbatim.

HENRICUS Dei Gratia, &c. Omnibus ad quos present. literæ pervenerint salutem: Sciatis quod ad pacem & tranquillitatem Universitat. Scholar. Oxon. providimus, & concessimus quod quatuor Aldermanni fiant in Oxon. & octo de discretioribus & legalioribus Burgensibus Oxon. Assistentes ipsis Aldermannis, qui Omnes fuerint nobis fidelitatem, & sint Assistentes, & consulentes Majori, & Ballivis Oxon. ad pacem nostram Conservandum, & ad Assisas dicte ville Custodiend. & ad investigand. malefactores, & perturbatores pacis nostre & vagabundos de nocte, & Receptatores Latronum & Malefactorum & corporale present. juramentum quod omnia prædicta fideliter observabunt.

And the other Charter of the University, 10 Ed. 3. which they also cite, to confirm their Interest in the Night-watch, doth but ~~confirm~~ and confirm this Charter of H. 3. In pursuance of this Charter and these Laws, the eight Assistants of the Mayor, to this day, do swear to be assistant unto the Mayor and Bailiffs, for the finding out such as be Common Disturbers of the Peace, and of Vagabonds wandering in the Night, and of such as receive Thieves and other Malefactors within the City or Liberties.

And now let the University either produce another Title to the Night-Watch, which we are assured they cannot, or else confess, that they had no Title to it before the Charter 11 Car. 1. Painter's Case (which in their Defence they produce to justify their Title) is the strongest Evidence that they had none. That Case was thus:

In the Year 1609. Painter was one of the Bailiffs of Oxford, and because he kept Watch and Ward, and pursued Hues and Cries in the Night, was sued in the University-Court, by the Vice-Chancellor, and sentenc'd to pay 20 l. for watching ten several Nights, and for not paying it he was committed to Prison; and thereupon Painter being removed by Habeas Corpus into the King's Bench, Henry Samborn, then High-Sheriff of Oxford-shire, returned, That the University had as well the Custody of the City as of the University, and the preservation of the Peace, and keeping of Watches, and the Government of them in the City and University; and that the University had power to make Laws for the Government, as well by Night as by Day, of Scholars and Townsmen: And then shews a Statute of the University, imposing a Penalty of Forty shillings upon Night-Walkers, and so justified these Proceedings against Painter. Now, the Court of King's Bench having nothing before them but the Return, and their Judgments being confined to it, what could they do less than remand the Party? But let the University shew how they came by the Custody and Government of the City, and who gave them Power to make By-Laws for the Government of it.

The City being baffled by the Return in the King's Bench, immediately applied themselves to the King, and amongst other things, complained, That the University had lately claimed, upon Record, the Custody and Government of the City, and Power to make Statutes to bind the Citizens: And thereupon the King referred the Matter in their Petition to several Lords of the Privy Council, who by Award, dated the 22d June 1612. reciting that part of the Petition, did declare in these words following, viz. That the University and City were two distinct Bodies, and had several and distinct Jurisdictions; and that the University hath not the Charge or Custody of the City, nor

And in another part of the Award these Lords did declare, That the Authority of the Mayor was in its kind absolute. and in no sort subordinate to the University.

Now let the University take this whole Case together, and they will find they had no reason to magnifie themselves in the Case of Painter, but to be as much ashamed of it as they ought to be of some others since. But we can put them in mind

mind of a late Case, and that is, the Case of *Dodwell*, in *Easter-Term*, 30 *Car.* in the *Common-Pleas*, who being sued in the Vice-Chancellor's Court for Forty Shillings, for being out of his House after Nine of the Clock, moved for a Prohibition, and upon long debate, and hearing Council on both sides, had a Rule for a Prohibition, by the Opinion of the whole Court.

We do not dispute the Universities Power to walk in the Night, it may be convenient for the government of the University, for securing their own Members, and keeping them within their Colleges; but this is a Walk, and not a Watch, and ought not to restrain the Officers of the City from doing their Duty, and keeping Watch and Ward, according to the Laws of *England*. Their Predecessors were not so fond of Power, they were contented to be secured by the Watch, without having the Burthen of it: And indeed, it is most reasonable the City should be trusted with this Power, for they are answerable for all Miscarriages committed within the City in the Night-time: If a Man is killed in the Night, and the Man-slayer escape, the whole Town is to be amerced; and if a man is robbed, and the Felon escape, the Hundred is to answer. Now, besides the City itself, we have an Hundred within the Liberty of the City.

charter 3. By the same ~~Charter~~ the Clerkship of the Market is granted to the University, with free Power to dispose of the Stalls and Standing-places in the Market, to have the full Government of the Markets, and to take Toll in the Markets: The University hath only a Title to the Clerkship of the Market, (and that did anciently belong to the City) but the Markets, and the placing of them, and all Stallage, Piccage, and all other kinds of Toll and Profits therein (except the Toll of Grain) by ancient Usage and Prescription, do yet belong unto the City, and for the Profits thereof, the City doth pay a large Fee-Farm to Their Majesties: So that in case that Charter shall be confirmed by Parliament, the City will lose the Markets, and the Profits arising thereby, which is a very considerable part of that Revenue whereby the Corporation is maintain'd and supported.

The University in their Defence pretend, that by the Charters *H. 3.* and *Ed. 3.* they have the full Government of the Market, and all incidents to it: Those Charters (which are the only Charters they have before 11 *Car.* relating to the Markets) do grant them only the Assize and Assay of Bread, Wine, and Ale, and the oversight of Weights and Measures. They say the City, upon Complaint in Parliament, desisted from taking Toll, and in the year 1429. did in Convocation disown Toll and Stallage, and that a publick Instrument was thereupon made; but they do not shew by whose order that Instrument was made, or that it was ever sealed (nor indeed was it ever sealed). It seems incredible, that the City should renounce their Title to Toll and Stallage, and yet be suffered to receive them both throughout all Ages, to this very day. Surely this matter did not appear to Judge *Jones*, 9 *Car.* who at the request of Arch-bishop *Laud*, Chancellor of the University, and the Earl of *Berks*, Steward of the City, did undertake the hearing of this matter, and upon hearing Council on both sides, did ~~decide~~ That the Market, and things incident to it, and all Toll (except of Grain) did belong to the City. The University will not allow, that the City do pay a Fee-Farm for the Profits of the Market; but *Dooms-day Book*, and many ancient Inquisitions in *Eire*, do plainly prove it.

privy 4. Power is given to the University by that Charter to hold a Court Leet, or view of Frank-pledge, as well over the Town and all the *Inhabitants*, as over the University, that it shall be a full and compleat Leet, and that the University shall have the Perquisites thereof, and Power to distrein for the same: Whereas the City hath five Leets, one absolute and compleat for *Northgate* Hundred, and the four other for the four Wards within the City, and therein have all the Power of Leets, except 1. The Enquiry into the Assize and Assay of Bread, Beer, and Wine. 2. The examination of Weights and Measures. 3. The punishment of Forestallers and Regrators. 4. The punishment of putrid *Viſuals*. 5. The punishment of those who wear Arms in the University. And, 6. The survey of the Highways and Streets, which being anciently likewise in the City, were 29 *Ed. 3.* surrender'd into the King's Hands, and by him granted to the University: And for these six Points the University hath ever since 29 *Ed. 3.* held a qualified Leet over the City and Suburbs, for so much, and for so many things and Enquiries as were given to the University 29 *Ed. 3.* And this Leet is to be served by a mixt Jury, one half

priviledg'd men, and the other half free.⁶ And the Penalties imposed by the said University in this Leet are to be estreated, and sent to the City, and to be levied by them to their own use, towards their Fee-Farm.

The University, in their Defence, prescribe to an absolute and compleat Leet, ratified by 14 H. 8. and confirmed 13 Eliz. but they cannot shew one Court-Roll where they have held a Leet for more Points than we allow them. The Charter 14 H. 8. doth not enlarge their old Leet, nor grant them any new one; it gives them Power to return Proceſs to their Leet, but leaves their Jurisdiction as it found it. Their own Charter 37 H. 6. plainly proves, that at that time they had no absolute and compleat Leet, for that Charter recites, that at that time they could punish Nuisances in the High-ways, only by Ecclesiastical Censures, and therefore gives them Power to hold a Leet for that purpose; and if they had not consualance of Nuisances in the High-ways, (which is the most ordinary Article of Enquiry) most certainly they have no compleat Leet by Prescription. They say we cannot prove, that the Profits of their Leet belong to us; but if they consult the same Charter of 37 H. 6. they will need no other Proof of it.

5. By the said Charter it is granted, that the University shall have Power to make Corporations, Orders, and Laws, to bind all the Inhabitants in the City, and may punish the Breaches of them according to the Laws of England, or the Statutes and Customs of the University, by discommoning or otherwise. Whereas the City and University are two distinct Corporations, and the one in no sort subordinate to the other; and therefore it is not reasonable that the Citizens should be bound by Laws which they never consented to, by themselves or their Representatives.

To maintain their Power to bind us by their By-Laws, they say, 1st, We are a Corporation alwaies subordinate to them: 2^d, That we take an Oath of Fealty to them every Year; and 3^d, Are accountable to them in their Court. The first of these is confuted by the Lords of the Council, which we have taken notice of before, and the other two are gross Mistakes: We do not, nor ever did take an Oath of Fealty to them; nor are we otherwise accountable to them, than all the People of England are, in being liable to answer there to any personal Action, where the Plaintiff is a Scholar.

6. By that Charter a Grant is made to the University of two Coroners; whereas time out of Mind, the City hath had two Coroners, who have sate upon all persons, as well priviledg'd as free, until the making that Charter: And therefore the City having an Interest in the Coroners, before that Grant, the Grant to the University is void, and Inquisitions taken under it *coram non Judice*.

The University make no Title to this before the Charter 11 Car. but only say, That the Chancellor having before that time Power to try all Felonies, the Coroner's Power was lodged in them: But they will find, if they look back, that we alwaies assigned a Coroner for their Members before that Charter.

7. By that Charter Townsmen are to be answerable for their Families in buying and selling all Wares where either Party is a Scholar; and also for all such persons as they shall harbour in their Houses above three Nights; and no Townsman is to build any Cottages, without the expresse leave of the Chancellor or Vice-Chancellor: Which are Restraints inconsistent with the Liberty of an Englishman.

The University justify these Hardships by their resemblance to the Laws before the Conquest; but these Gentlemen should consider, that those Laws were then made to secure the Prince, and not to enable Subjects to tyrannize over one another; they were then apparent Badges of Slavery, but necessary to support the Prince in his new Conquests. But what occasion have the University for any such Power, unless they would have Sovereign Power in Oxford, and make the Citizens Subjects and Slaves to their Authority?

8. The University doth pretend to have a Power to discommon Citizens at their Pleasure, and to inhibit all Priviledg'd Persons to have any Commerce or Trading with them; which they sometimes use, to the Ruine of the Citizens and their Families.

The University prescribe to this as an ancient Right, but they do not pretend to any Grant of it before that Charter. And for their Usage, if that alone would give a Right, they would then be able to justify many things which they have reason

reason to be ashamed of. But they say the City doth the same thing, who make it a Condition of their Leases, not to let their Houses to Scholars, nor to grind at any other than their Mills. We deny that we have any such Condition in our Leases relating to Scholars; and for the grinding at our Mills, the Covenant doth but pursue the Custom of the City; for all persons residing within the City do owe Suit to grind at our Mills, and we have at all times, in our Courts, amerced divers persons for not grinding there.

9. By the said Charter it is granted, that Scholars, their Servants, and the Servants of the University, shall not be forced to appear at Musters, or contribute thereunto; and that they shall be discharged of Subsidies, Reliefs, Impositions, Contributions, and Sums of Money then granted, or hereafter to be granted, any Act of Parliament, Statute, or Ordinance to the contrary notwithstanding.

1. The University entitle themselves to these Immunities by Custom, and say, All foreign Universities enjoy the same Privilege. We know of no such Custom, nor are we concerned to enquire what is used in foreign Universities, but we may with some assurance affirm, that no University in the World doth pretend to exempt so vast a Body from publick Duties as they do. Originally the University had no Privilege at all; 28 H. 3. they had a Grant of Privilege in their Courts for Clerks only, but they soon enlarged their Jurisdiction, and in the 18th Year of E. 1. gave the City reason to complain in Parliament, that the University did challenge others to be privileged, who were not Scholars; and thereupon it was order'd by the King in Parliament, by the consent of both Bodies, that these and no others should have the Privilege of the University, viz. Clerks and their Servants, Parchment-makers, Limners, (that is, the Guilders and Painters of Books) Writers, Barbers, and the Livery-men of Clerks: But the University soon broke through this Composition; and therefore 37 H. 6. we were forced to come to a new Agreement, and then it was agreed, that these only should have the Privilege of the University, viz. Scholars and Clerks dwelling within the University, and their daily continual Servants, the Steward, Feodmen and Bailiffs, Stationers, Book-binders, Limners, Writers, Parchment-makers, Barbers, Caters, Manciples, Spencers, Cooks, Lavenders, and the Servants of Scholars, taking Wages without Fraud. Thus we see from how narrow a beginning this Privilege hath sprung up, almost to eclipse the whole Town. But they tell us, That Privileged Persons, who use Merchandise in the City, shall be taxed for their Merchandise; we are beholden to them for that: But this Charter makes no such distinction, that is a general Exemption to all privileged Persons, from all Taxes and Contributions whatsoever: And it is fit to be considered, whether, if this Bill pass, all persons whom they shall privilege, will not be discharged from all Duties upon the Acts for the settling the Militia, and other ~~What~~ Duties now in force, ~~which~~ /

The University have already pretended, upon the strength of this Charter only, That privileged persons are exempted from those Acts, and they will have good Reason for it, when that Charter shall have the Sanction of an Act of Parliament.

10. The University, by means of a Composition made shortly after the Conflict 29 Ed. 3. and confirmed by the said Charter, do require the Mayor and 62 Citizens with him yearly, upon *Scholasticas-day*, (which is the Tenth day of February) to repair to St. Marys Church in Oxford, and to make an Oblation there, upon the high Altar, of 63 pence, for the Souls of 63 Scholars slain in the time of King Ed. 3. This being in the Original gross Superstition, is too great a Badge of Popery to be required in a Protestant University.

The University confess the Superstition, but say, The Mass and Offering were enjoined at the Request of the City, in exchange for the yearly Sum of One hundred Marks, which were first imposed upon them: But the contrary is most true, for the Award was made by the Bishop of Lincoln, who had no Power to impose the yearly Payment of 100 Marks, and the 100 Marks were only a Penalty to secure the performance of the Superstition, and that appears by the Covenant of the City, 14. May, 31 E. 3. to say Mass, and make the Offering, and the Bond of the City 15. May, 31 Ed. 3. to pay 100 Marks yearly, and a Writing of the University, 16. May, 31 E. 3. whereby the University agree, that the 100 Marks yearly shall not be paid, if the Superstition is duly observed, so that the Award in-

intended the performance of the Superstition, and not the Payment of the 100 Marks yearly. But the University say, that this Superstition, by consent of both Parties, in *Q. Elizabeths* time, was changed into a Sermon, a Communion, and an Offering: We find no Footsteps of any such exchange, but if any such there were, the University have been ever since very fond of their old Superstition, for they never since preached, or had a Communion upon that day, but they do yet require us to Offer as heretofore: And in the year 1660, they petitioned the King and Council, and therein set forth, That the Mayor and 62 Citizens ought to make an Oblation of 63 pence, in Memory of a great Slaughter of Scholars, committed upon *Scholasticus-day*, and prayed an Order for the continuance of it, and it was ordered accordingly.

11. By the said Charter it is granted, That Scholars, or Priviledg'd persons, shall not be impleaded in the Courts of *Westminster*, for such things as the Chancellor hath cognizance of; and that they shall be dismissed from thence without pleading their Privilege, or paying their Fees, which doth often fall out to be a very great Oppression to the Officers and Ministers of Justice; for if upon demand of the Vice-Chancellor they do not discharge such priviledg'd persons, the Vice-Chancellor, by colour of this Clause, doth imprison the Bailiff, as on the 20. of *October*, in the Year 1689, he did one *Edward Adams*, a sworn Bailiff, for not discharging *Henry Wildgoose*, who was arrested at the Suit of the City, by a Writ issuing out of the Court of Common-Pleas. And by colour of the said Clause, if any person sue a priviledg'd man in any of the Courts of *Westminster*, the said Vice-Chancellor doth cite the Plaintiff into the Court of the University, for breach of their Statutes, and doth condemn him in Expences, for suing a priviledg'd person out of the University.

To this part of our Case they Harangue upon the Antiquity and Usefulness of their Court. We do not complain of their Courts, but the abuse of them; although it may seem strange that any Government should suffer a Court so repugnant to the Laws of the Country.

They seem to insinuate that the Imprisonment of the Bayliff hath been twice at least acknowledged in *Westminster-Hall*. But we believe the Vice-Chancellor would scarce be able to maintain it, if the Bayliff should bring an Action of False Imprisonment against him. We never heard of any such Case, and if there were, we have reason to believe, it was dress'd up as *Painter's* was.

12. By the said Charter it is granted, that Priviledged Men shall have as much Liberty to Trade, as the Freemen of the said City; and by colour of this Grant, the said University do take upon them to set up Trades, and to License certain Persons, whom they call Priviledged Persons, openly to use Trades, and to sell Merchandizes within the said City and Suburbs by Retail; which is contrary to the Ancient Charters, Customs, and Priviledges of the said City, and to certain Compositions and Agreements made between the said University and City.

The University entitle Priviledged Men to Trade by Prescription, saved by the oldest Charters of the City, allowed in Parliament 18 *Ed. 1st*. declared by the Charter of *H. 8.* and ratified by the 13 *Eliz.* It is most plain they can have no Right by Prescription so large as this Charter, for the Charter is general, and gives them Power to set up any Trades, and the usage hath always been against them; besides their own Charter 12 *Ap. 10. Ed. 1.* is an Evidence that they had no Title by Prescription to use Trades in *Oxford*, for that Charter recites, that the Burgesses of the Town would not suffer any that were not of their Guild, to sell Linnen or Woollen Cloath in *Oxford* by Retail; and therefore grants that others may sell such Wares by Retail, or Whole-sale. But the City having a Right by Prescription to exclude Foreigners, that Grant will not take it from them: And we can shew the University many of their Petitions to the King, complaining that the City did exclude all Persons that were not of their Guild from selling Wares within their Liberties, which had been needless if they had Power to set up Trades, and sell Wares in *Oxford*, as well as the Citizens.

Nor is it more true that the oldest Charter of the City saves their Right of Trading in *Oxford*; the oldest Charters the City hath, are granted by *Henry* the Second, King *John*, and *Henry* the Third: The first of these grants and confirms to the City all Customs which they had in the time of his Grandfather, (*viz.*) *Particular. Guildam suam Mercatoriam*, with all its Liberties; and that none that is not of

of that Guild shall Merchandize in the City or Suburbs; together with all Liberties and Customs which London had. So that by this very Charter it appears, that it was the Custom of the City to exclude Foreigners in the time of the Grandfather of Henry the Second, who was Henry the First; and none of these Charters make mention of the University, or save their Rights. It is true, in a Charter of the City in time of Edward the First, being an Exemplification of these Charters of Henry the Second, King John, and Henry the Third, and a Grant of many other Particulars, there is a saving of the University Rights in general. But that Charter doth not grant to us any Right of sole Trading, (as indeed none can) and therefore the saving cannot be applied to it.

For the 18 Edw. 1. if they consider that, they will find no Reason to presume that an Allowance to them to use Trades, there are no words in it relating to Trades. It only settles (as we have said before) what Persons shall have the Privilege of the University, which we deny to relate to Trade, and if it did, if they will stand to that Composition, they will find their Privilege much more narrow than they now enjoy it; and if they will waive their Encroachments upon us, and go back to the Composition 18 Edw. 1. or to the other of 37 H. 6. which their Predecessors took to be great Improvements of their Privileges, we will readily allow all Persons within those Compositions, as much Privilege as they will desire for them.

For the Charter 14 H. 8. that was a great Encroachment upon our Trade, but yet nothing so large as this. We have been the larger upon this Branch relating to Trade, because we know what would become of our Corporation, if we once allow whom they think fit to matriculate a Right to Trade amongst us. A Power to Trade without the incumbrance of chargeable Offices, by which the City doth subsist, would soon draw all the Inhabitants of the Town into their Corporation.

13. Whereas by certain Compositions heretofore made between the said University and City, the Menial Servants of all Scholars, and all their other Servants taking Wages without Fraud or Deceit, are to enjoy the Privileges of the University; the said University, upon pretence of later Grants, have fraudulently, and with an intent to weaken the Government of the said City, granted colourable Privileges to divers Members of the said City, and upon pretence that they were become the Under-Groom, Gardiner, or Officer of some Colledge, have matriculated them, and whilst they have continued Members of the City have administered unto them an Oath to the Effect following, (*viz.*) *You shall swear, That you shall not attempt any Cause of yours before the Mayor, or Bayliffs of Oxford, neither shall you answer before any of them as your Judge, so long as you shall continue a Privileged Person. So God, &c.* Which is in terms repugnant to the Oath which every Freeman of the City doth take at the time of his Admission into the Liberties of the said City; and particularly they have within the space of Three Years last past matriculated one William Turton, upon pretence that the said William Turton was Gardiner of Exeter Colledge; whereas the said William Turton was a Freeman of the said City, and did continue to use the Trade of a Vintner during his Life, and obtained the Title of the said Office only to avoid the bearing such Offices in the said City, as his condition and substance had made him capable of. They have also upon the same terms matriculated one Henry Wildgoose a Freeman, and one of the Common-Council of the said City, who being apprehensive that he should be chosen into the Office of Chamberlain of the said City, did, to avoid the same, about two days before the Election for the said Office, procure himself to be matriculated upon pretence that he was a Groom to one Doctor Irish, although the said Henry Wildgoose did, and yet doth continue the Trade of a Painter within the said City, and hath no further Relation to the said Doctor Irish, than to Protect himself against the said City, and by colour of the said Matriculation, the said Henry Wildgoose being Elected Chamberlain of the said City, did, and yet doth refuse to accept the said Office, and is protected in his Disobedience by the University; by which means other Citizens are encouraged to withdraw themselves from their Majesties Service in the said City.

The University do not in their Defence deny they have matriculated Wildgoose and Turton, but say, they matriculated Wildgoose as Servant to Doctor Irish, and as a Linner, and Turton as a Vintner. As for Wildgoose, an Action being brought
against

against him in the Court of *B. at West. Term. Mich. 1. W. & M.* for refusing the Office of Chamberlain, the University demanded Cognizance of the Cause, because he was Servant to Doctor *Irish*, but it appearing to the Court, that *Wildgoose* was a Freeman, and a Member of the Common-Council, and an House-keeper, and kept Shop in the City, and that he was matriculated but two days before the Election, and had declared that he would be matriculated to avoid the Election, the Court were of Opinion that the City were abused in it, and that the Matriculation was fraudulent, and therefore denied them Cognizance. The University not contented with this Resolution, in *Hilary Term* following moved the Court again, and having found in the Compositions 18 *Edw. 1.* and 37 *H. 6.* that *Limners* were to have the Priviledge of the University, they demanded Cognizance because he was a *Limner* (tho' they thought of no such thing when they matriculated him) but it appearing to the Court that *Limners* were such only as did adorn Books by painting them with Gold and Water-colours before Printing was known, and that *Wildgoose* was a Painter-stainer; and it appearing also to the Court by the very Compositions which they produced, that none was to have the Priviledge of the University that got it by Fraud or Malengine, they did again deny to grant them Cognizance. For the Case of *Turton*, they find they cannot justifie his Matriculation as Servant to a Colledge, though that was his first Title, they will therefore now entitle him as the University Vintner: Whether he stood upon that, or the first Title, it is plain he was matriculated only to elude the Election of the City, and to defeat their Power over him; they never pretended to Priviledge any Vintner before as such, nor have they any Foundation for it by usage or composition. The Reason of allowing Priviledge is, that Scholars shall not be taken from their Studies to Answer in the King's Courts; but that Reason will not justifie this Case, nor is a Vintner so necessary an Attendant upon the University, that he may not do his Duty to the Government. They have never before pretended by their Priviledge to discharge the Members of any Corporation from their Duty they owe to it; they may with as much Reason practice the same thing upon the Citizens of *London* as upon us, we are as much a distinct Corporation from the University as they are.

The University seem to take it ill, that the City was not left to prove their Surmises against the Matriculation of *Wildgoose* in their Court, and there to receive Justice from their hands. But they must excuse us, if we thought them too far Parties to be Indifferent Judges.

And now having followed them through all the parts of their Defence, we do Appeal even to the University, whether it doth not behove us to oppose the Confirmation of this Charter, and whether any of the Particulars which we have charged upon it as new Grants, were their unquestionable Rights before. But the Author of the Defence tells us, That the Proviso in the Bill fully secures the Rights, Liberties, and Immunities of the City, and puts them wholly out of the reach of the Bill. That as the Confirmation is by Act of Parliament, so is the Proviso made by the same Authority; and therefore no greater Power can secure their Rights, than that, which as effectually restrains their Encroachments. And in another place, That the force of the Clause is so evident to all Men of Sense and Law, that in reference to the City it wholly disables and destroys the Bill. But let us consider this Charter and the Bill together, and we shall be able to Judge of these Assertions, and whether the Author hath offered either Law or Sense to maintain them.

1. The Charter grants to the University divers express Powers over the City, and many things which the City by good Title are in possession of: And the Bill enacts, That this Charter shall be good, effectual, and available in the Law, to all Intents and Purposes, as amply, &c. as if the same were recited *verbatim* in the said Act, with a Proviso, that that Act shall not be to the Prejudice of the Priviledges and Liberties of Right belonging to the City, but that they shall be as free as they were before. Now this Act referring to that Charter, all Matters comprized in it will as fully be enacted, as if they were expressly enacted in the body of the Act, without relation to the Charter; and then the Case will be no more, than if the Act should expressly grant to the University such Estates and such Powers, provided they shall have no such Estates nor Powers; which is to grant and not to grant, which every man will allow to be repugnant and void: So that a Confirmation may

be by Act of Parliament, and yet a *Proviso* in that Act may be void ; their Rights may be secured, and their Encroachments not restrained.

2. The City of *Oxford* are entituled unto the several Priviledges before specified (except the Power of granting Wine and Ale Licences) by Usage and Prescription only, and therefore they can never have any benefit of this *Proviso*, without proving the particular Usage and Custom at the time of making this Act, which in a short time will be very difficult for them to do: But were this matter less clear, yet we humbly hope, that it will not be expected that we should hazard our ancient Liberties, and the Freedom of our selves and our Posterity, upon a Moot Point.

3. Admitting this *Proviso* would effectually secure our ancient Rights, yet will it not prevent the operation of the Statute upon many things, which although the City make no Title to; yet would they greatly suffer, if they should be vested in the University. As for instance ; in *Oxford* the Market is free for all manner of Grain ; this Charter grants the Toll of Grain to the University, (which is void as a Grant) if this Parliament confirm it, they will have a Right to that Toll ; which will be very injurious to the City, and all the neighbouring Country. We could give many Instances of this nature.

4. And lastly, If the University believe themselves, and are in earnest when they tell us, that the force of this *Proviso*, in reference to the City, wholly disables and destroys the Bill, they cannot reasonably desire a Confirmation of this Charter charged with the *Proviso*, for the *Proviso*, according to them, will have the effect of an Exception of this Charter ; for if they confirm this Charter subject to the *Proviso*, then will the *Proviso*, as to all the new Estates and Powers in the Charter relating to the City, wholly disable and destroy the Bill, which comprehend the whole Charter (except the Power of Printing). Which, and whatsoever else may be to their Advantage, and not injurious to us, we desire may be specially enacted. And if the University are sincere, we see no reason why they should be so fond of this Charter, unless they would lay the Foundation of Eternal Suits and Controversies.

We shall not concern our selves to shew, that this *Proviso* takes no care of all the Inhabitants of the City, who are Members of neither Body, and yet are very numerous, nor of all the Gentlemen of the Kingdom who come to *Oxford*, but leaves them subject to all the extraordinary Powers of that Charter.

But we shall not engage others in our Difficulties, nor be Suitors for more than our selves, for we cannot fear that we shall be abandoned in this Reign, who have been protected by the Government in all Ages ; Kings have been our Nursing Fathers, and the whole Legislature our Protection ; we have Monuments of Royal Bounty in every Reign since *Henry II.* and are able to produce the Broad Seal of every King since : And shall one Bill destroy the Bounty of so many Kings ? Shall we be obliged to date our Misfortunes from a *Protestant Reign* ? God forbid. Their Majesties, and this Parliament, who have done so glorious things for the whole Nation, and have almost sacrificed themselves to do us good, will assuredly protect us, and suffer us to partake in that common Liberty, which they have entailed upon all the People of *England*.

F I N I S.